

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

**JENNIFER NORRIS, Individually, and
as Parent and Legal Guardian of
DYLAN NORRIS, et al.,**

Plaintiffs,

v.

Case No. 2:03-CV-563-FTM-29SPC

UNITED STATES OF AMERICA,

Defendant.

_____ /

Case Management Report

The parties have agreed on the following dates and discovery plan pursuant to
Fed.R.Civ.P. 26(f) and Local Rule 3.05(c):

| DEADLINE OR EVENT | AGREED DATE |
|---|-------------|
| Certificate of Interested Persons and Corporate Disclosure Statement | Filed. |
| Motions to Add Parties or to Amend Pleadings | 3/19/04 |
| Disclosure of Expert Reports Plaintiff: | 7/16/04 |
| Defendant: | 10/15/04 |
| Discovery Deadline Fact: | 1/19/05 |
| Expert: | 3/18/05 |
| Dispositive Motions, <i>Daubert</i>, and <i>Markman</i> Motions | 7/1/05 |
| | |

| DEADLINE OR EVENT | AGREED DATE |
|---|--|
| Meeting <i>In Person</i> to Prepare Joint Final Pretrial Statement | 8/29/05 |
| Joint Final Pretrial Statement | 9/16/05 |
| All Other Motions Including Motions <i>In Limine</i>, Trial Briefs | 10/3/05 |
| Final Pretrial Conference | 10/3/05 |
| Trial Term Begins | 11/1/05 |
| Estimated Length of Trial | 10 Days |
| Jury / Non-Jury | Non-Jury |
| Mediation Deadline: Mediator: Address: Telephone: | 8/5/05 TBD |
| All Parties Consent to Proceed Before Magistrate Judge | Yes: No: <u> X </u> Likely to Agree: |

I. Meeting of Parties.

Pursuant to Local Rule 3.05(c)(2)(B) or (c)(3)(A), a meeting was held on January 15, 2004, at 1:30 p.m., and was attended in person by:

| <u>Name</u> | <u>Counsel For</u> |
|----------------|--------------------------|
| Ann Frank | Plaintiffs |
| Mark Steinbeck | United States of America |

Counsel for Plaintiffs subsequently met with Kenneth M. Oliver, counsel for the State of Florida, who concurred with the scheduling matters reflected herein.

II. Pre-Discovery Initial Disclosures of Core Information.

A. Fed.R.Civ.P. 26(a)(1)(C) - (D) Disclosures.

The parties agree to exchange information described in Fed.R.Civ.P. 26(a)(1)(C) - (D) by February 27, 2004.

Below is a description of information disclosed or scheduled for disclosure.

Plaintiff's statement of damages.

B. Fed.R.Civ.P. 26(a)(1)(A) - (B) Disclosures.

The parties agree to exchange information referenced by Fed.R.Civ.P. 26(a)(1)(A) - (B) by February 27, 2004.

Below is a description of information disclosed or scheduled for disclosure.

Information required by Rule 26(a)(1)(A) & (B).

III. Agreed Discovery Plan for Plaintiffs and Defendants.

A. Certificate of Interested Persons and Corporate Disclosure Statement.

This Court has previously ordered each party, governmental party, intervenor, non-party movant, and Rule 69 garnishee to file and serve a Certificate of Interested Persons and Corporate Disclosure Statement using a mandatory form. No party may seek discovery from any source before filing and serving a

Certificate of Interested Persons and Corporate Disclosure Statement. A motion, memorandum, response, or other paper — including emergency motion — is subject to being denied or stricken unless the filing party has previously filed and served its Certificate of Interested Persons and Corporate Disclosure Statement. Any party who has not already filed and served the required certificate is required to do so immediately.

Every party that has appeared in this action to date has filed and served a Certificate of Interested Persons and Corporate Disclosure Statement, which remains current:

Yes: X

No:

Amended Certificate will be filed by _____ (party) on or before _____ (date).

B. Discovery Not Filed.

The parties will not file discovery materials with the Clerk except as provided in Local Rule 3.03. The Court encourages the exchange of discovery requests on diskette. See Local Rule 3.03 (f). The parties further agree as follows: NA.

C. Limits on Discovery.

Absent leave of Court, the parties may take no more than ten depositions per side (not per party). Fed.R.Civ.P. 30(a)(2)(A); Fed.R.Civ.P. 31(a)(2)(A); Local Rule 3.02(b). Absent leave of Court, the parties may serve no more than twenty-five interrogatories, including sub-parts. Fed.R.Civ.P. 33(a); Local Rule 3.03(a). The parties may agree by stipulation on other limits on discovery. The Court will consider the parties' agreed dates, deadlines, and other limits in entering the scheduling order. Fed.R.Civ.P. 29. In addition to the deadlines in the above table, the parties have agreed to further limit discovery as follows:

1. Depositions. **The parties request leave of Court to take no more than 15 depositions per side based on the nature of the claims in this matter creating the probability that each side will have 4 or more experts and on the number of individual parties and medical providers.**
2. Interrogatories. **The parties request leave of Court to propound**

no more than 50 interrogatories per side based on the nature of the claims in this matter creating the probability that each side will have 4 or more experts and on the number of individual parties and medical providers.

3. Document Requests. NA.
4. Requests to Admit. NA.
5. Supplementation of Discovery. NA.

D. Discovery Deadline.

Each party shall timely serve discovery requests so that the rules allow for a response prior to the discovery deadline. The Court may deny as untimely all motions to compel filed after the discovery deadline. In addition, the parties agree as follows: **to split discovery deadlines to allow expert opinion discovery to be conducted after conclusion of fact discovery, in an effort to make unnecessary the taking of supplemental depositions of expert witnesses.**

E. Disclosure of Expert Testimony.

On or before the dates set forth in the above table for the disclosure of expert reports, the parties agree to fully comply with Fed.R.Civ.P. 26(a)(2) and 26(e). Expert testimony on direct examination at trial will be limited to the opinions, basis, reasons, data, and other information disclosed in the written expert report disclosed pursuant to this order. Failure to disclose such information may result in the exclusion of all or part of the testimony of the expert witness. The parties agree on the following additional matters pertaining to the disclosure of expert testimony: NA.

F. Confidentiality Agreements.

Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. The Court is a public forum, and disfavors motions to file under seal. The Court will permit the parties to file documents under seal only upon a finding of extraordinary circumstances and particularized need. *See Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013 (11th Cir. 1992); *Wilson v. American Motors Corp.*, 759 F.2d 1568 (11th Cir. 1985). A party seeking to file a document under seal must file a motion to file under seal requesting such Court action, together with a memorandum of law in

support. The motion, whether granted or denied, will remain in the public record.

The parties may reach their own agreement regarding the designation of materials as “confidential.” There is no need for the Court to endorse the confidentiality agreement. The Court discourages unnecessary stipulated motions for a protective order. The Court will enforce appropriate stipulated and signed confidentiality agreements. See Local Rule 4.15. Each confidentiality agreement or order shall provide, or shall be deemed to provide, that “no party shall file a document under seal without first having obtained an order granting leave to file under seal on a showing of particularized need.” With respect to confidentiality agreements, the parties agree as follows: NA.

G. Other Matters Regarding Discovery. NA.

IV. Settlement and Alternative Dispute Resolution.

A. Settlement.

The parties agree that settlement prior to completion of discovery is:

_____ likely X unlikely.

The parties request a settlement conference before a U.S. Magistrate Judge.

_____ yes X no _____ likely to request in future

B. Arbitration.

Local Rule 8.02(a) defines those civil cases that will be referred to arbitration automatically. Does this case fall within the scope of Local Rule 8.02(a)?

_____ yes X no

For cases **not** falling within the scope of Local Rule 8.02(a), the parties consent to arbitration pursuant to Local Rules 8.02(a)(3) and 8.05(b):

_____ yes X no _____ likely to agree in future

_____ Binding _____ Non-Binding

In any civil case subject to arbitration, the Court may substitute mediation for arbitration upon a determination that the case is susceptible to resolution through mediation. Local Rule 8.02(b). The parties agree that this case is susceptible to

resolution through mediation, and therefore jointly request mediation in place of arbitration:

 X yes no likely to agree in future

C. Mediation.

The parties agree to mediate this matter and to use a mediator from the Court's approved list. The parties agree to the date stated in the table above as the last date for mediation.

D. Other Alternative Dispute Resolution. NA

Date: _____

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United States Attorney

By: _____
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